

HONORABLE ROBERT J. BRYAN

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON AT TACOMA

LAWRENCE HARTFORD, et al.,

Plaintiffs,

-vs-

BOB FERGUSON, in his official capacity as  
Washington State Attorney General, et al.,

Defendants.

NO. 3:23-cv-05364-RJB

DEFENDANTS JOHN HORCH AND  
TONY GOLIK'S MOTION TO  
DISMISS 42 U.S.C. §1983 & §1988  
CLAIMS AND DAMAGES

Note on Motion Calendar: 7/14/2023

**I. RELIEF REQUESTED**

Defendants John Horch and Tony Golik, by and through their counsel of record Chief Civil Deputy Prosecuting Attorney Leslie A. Lopez and Amanda Migchelbrink, Senior Deputy Prosecuting Attorney, respectfully request dismissal, with prejudice, of all claims brought pursuant to 42 U.S.C. §1983 and 42 U.S.C. §1988 in accordance with Fed. R. Civ. P. 12(b)(6). While the Complaint challenges the constitutionality of Senate House Bill 1240 ("SHB 1240"), it fails to allege any facts to suggest that Defendants John Horch and Tony Golik, either personally or through their roles as Clark County officials, engaged in a Second Amendment violation. For this reason, all claims against Defendants John Horch and Tony Golik for damages and relief under 42

1 U.S.C. §1983 and §1988 should be dismissed.

## 2 II. STATEMENT OF FACTS

3 Plaintiffs filed this lawsuit on April 25, 2023. Dkt. 1. Plaintiffs' Complaint attempts to  
4 challenge SHB 1240 on the basis that it allegedly violates the Second Amendment. Dkt. 1.  
5 According to the Complaint, SHB 1240 was signed into law by Governor Inslee on April 25, 2023.  
6 Dkt. 1, ¶26. The Complaint asserts that SHB 1240 makes it illegal for any person in Washington  
7 to manufacture, import, distribute, or sell assault weapons. Dkt. 1, ¶26.  
8

9 The Complaint alleges that several of the Plaintiffs (Mr. Hartford, Mr. Mitchell, Mr. Bass)  
10 have a present intention and desire to purchase the type of weapons that are banned by SHB 1240.  
11 Id., ¶64, 70, 77. The Complaint alleges that Plaintiff Sporting Systems Vancouver, Inc. has a  
12 present intention and desire to sell the weapons prohibited by SHB 1240. Id., ¶81.  
13

14 The Complaint identifies John Horch as the Clark County Sheriff. Id., ¶20. The Complaint  
15 identifies Tony Golik as the Clark County Prosecutor. Id., ¶24. The Complaint asserts that John  
16 Horch and Tony Golik are sued in their official capacities. Id., ¶20, 24. The Complaint alleges no  
17 other facts regarding these defendants or their conduct.  
18

## 19 III. AUTHORITY

### 20 A. Legal Standard

21 The Court must dismiss a complaint as a matter of law pursuant to Fed. R. Civ. P. 12(b)(6)  
22 where the complaint fails "to state a claim upon which relief can be granted." A complaint "must  
23 contain a 'short and plain statement of the claim showing that the pleader is entitled to relief.'"  
24 *Ashcroft v. Iqbal*, 556 U.S. 662, 677–78 (2009) (quoting Fed. R. Civ. P. 8(a)(2)). When considering  
25 a Rule 12(b)(6) motion to dismiss, the Court presumes all material factual allegations to be true  
26 and draws reasonable inferences in favor of the non-moving party. *Spewell v. Golden State*  
27  
28

1 *Warriors*, 266 F.3d 979, 988 (9th Cir. 2001). However, the Court is not required to accept as true  
 2 any conclusory allegations of law, and unwarranted deductions of fact, or unreasonable inferences.

3 *Id.*

4  
 5 To state a claim on which relief may be granted, Plaintiffs must go beyond an “unadorned,  
 6 the-defendant-harmed-me accusation[s],” “labels and conclusions,” and “naked assertions devoid  
 7 of further factual enhancement.” *Iqbal* at 678 (internal citations omitted). While legal conclusions  
 8 can provide the complaint's framework, they must be supported by factual allegations. *Id.* at 664.  
 9 Factual allegations themselves must be enough to demonstrate a plausible right to relief that is  
 10 “above the speculative level.” *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007).

11  
 12 Finally, the complaint “must contain sufficient allegations of underlying facts to give fair  
 13 notice and to enable the opposing party to defend itself effectively” and “must plausibly suggest  
 14 an entitlement to relief, such that it is not unfair to require the opposing party to be subjected to  
 15 the expense of discovery and continued litigation.” *AE ex rel. Hernandez v. Cnty of Tulare*, 666  
 16 F.3d 631, 637 (9th Cir. 2012) (internal quotations omitted).

17  
 18 **B. The Court Should Dismiss Plaintiffs Claims for Damages and Relief Under 42**  
 19 **U.S.C. §1983 & §1988 Because Plaintiffs Have Failed to State a Claim Upon Which**  
 20 **Relief Can Be Granted**

21  
 22 The Court should dismiss, with prejudice, all 42 U.S.C. §1983 and §1988 claims brought  
 23 against Defendants John Horch and Tony Golik because Plaintiffs’ Complaint fails to state a valid  
 24 claim for relief under these statutes.

25 42 U.S.C. § 1983 provides:

26 Every person who, under color of any statute, ordinance, regulation, custom, or  
 27 usage, of any State ... causes to be subjected, any citizen of the United States ... to  
 28 the deprivation of any rights, privileges, or immunities secured by the Constitution  
 and laws, shall be liable to the party injured in an action at law[.]

1 42 U.S.C. § 1983 “is not itself a source of substantive rights,” but rather provides “a method of  
2 vindicating federal rights elsewhere conferred.” *Graham v. Connor*, 490 U.S. 386, 393–94, 109  
3 S.Ct. 1865, 104 L.Ed.2d 443 (1989). 42 U.S.C. §1988 is the mechanism through which successful  
4 civil rights litigants bringing claims under §1983 can receive an award of attorney fees. See  
5 *Hensley v. Eckerhart*, 461 U.S. 424, 429, 103 S. Ct. 1933 (1983).  
6

7 To plead a §1983 claim, a plaintiff must set forth facts in support of the following elements:  
8 (1) the conduct complained of must have been under color of state law, and (2) the conduct must  
9 have subjected the plaintiff to a deprivation of constitutional rights.” *Jones v. Community*  
10 *Redevelopment Agency of Los Angeles*, 733 F.2d 646, 649 (9th Cir. 1984). “A prerequisite to  
11 recovery under the Civil Rights Act, 42 U.S.C. § 1983, is that the plaintiff prove that the defendants  
12 deprived him of a right secured by the Constitution and the laws of the United States.” *Gomez v.*  
13 *Whitney*, 757 F.2d 1005, 1006 (9th Cir. 1985).  
14

15 Liability can arise under 42 U.S.C. §1983 with respect to an individual or a government  
16 entity. Liability against an individual defendant under §1983 can only arise upon a showing that  
17 the defendant personally participated in a constitutional violation. *Taylor v. List*, 880 F.2d 1040,  
18 1045 (9th Cir. 1989). To show personal participation, a plaintiff must allege that a defendant “does  
19 an affirmative act, participates in another’s affirmative acts, or omits to perform an act which he is  
20 legally required to do that causes the deprivation.” *Leer v. Murphy*, 844 F.2d 628, 633 (9th Cir.  
21 1988).  
22

23 A 42 U.S.C. §1983 claim against a government entity, commonly referred to as a *Monell*  
24 claim, requires a plaintiff to demonstrate that an official policy, custom, or pattern on the part of  
25 the government entity was the actionable cause of a constitutional injury. *Tsao v. Desert Palace,*  
26 *Inc.*, 698 F.3d 1128, 1143 (9th Cir. 2012). A local government may only be held liable under §1983  
27  
28

1 for acts which the government “has officially sanctioned or ordered.” *City of St. Louis v.*  
 2 *Praprotnik*, 485 U.S. 112, 123, 108 S. Ct. 915 (1988) (quoting *Pembaur v. City of Cincinnati*, 475  
 3 U.S. 469, 470, 106 S. Ct. 1292 (1986)). Claims against government officials in their “official  
 4 capacity” are *Monell* claims. See *Will v. Michigan Dep’t of State Police*, 491 U.S. 58, 71 (1989);  
 5 *see also Kentucky v. Graham*, 473 U.S. 159, 166 (1985) (“[A]n official-capacity suit is, in all  
 6 respects other than name, to be treated as a suit against the entity.”).

7  
 8 The Complaint alleges that John Horch and Tony Golik are being sued in their official  
 9 capacities as Clark County Sheriff and Clark County Prosecutor. Yet, the Complaint fails to state  
 10 any facts to articulate a *Monell* claim against Clark County. The Complaint does not identify any  
 11 County policy, custom, or pattern that was the actionable cause of any alleged constitutional injury  
 12 suffered by the Plaintiffs. The Complaint also fails to set forth any facts to suggest that Defendants  
 13 John Horch and Tony Golik engaged in any conduct that deprived Plaintiffs of their rights under  
 14 the Second Amendment. In fact, the complaint contains no factual allegations at all regarding either  
 15 of these defendants, other than to state their position as government officials. No amendment of  
 16 Plaintiffs’ claims can fix these deficiencies. Plaintiffs cannot legally hold a county prosecutor or a  
 17 county sheriff responsible for the enactment of a state statute. For this reason, the Complaint fails  
 18 to state a §1983 claim under Fed. R. Civ. 12(b)(6), fails to articulate a basis for damages or fees  
 19 under §1988, and these claims must be dismissed with prejudice. Additionally, the Plaintiff’s  
 20 counsel should be sanctioned for including the Clark County Defendants because they were aware  
 21 none of those Defendants took any action under the new Washington State Law.  
 22  
 23  
 24

#### 25 IV. CONCLUSION

26 For the reasons set forth above, Plaintiffs’ claims for relief and damages under 42 U.S.C.  
 27 §1983 and §1989 against Defendants John Horch and Tony Golik should be dismissed with  
 28

1 prejudice.

2 I certify the foregoing document contains 1,416 words, in compliance with Local Civil  
3 Rules.  
4

5 Respectfully submitted this 29<sup>th</sup> day of June, 2023.  
6

7  
8 *s/ Leslie A. Lopez*

9 Leslie A. Lopez, WSBA #46118  
10 Chief Civil Deputy Prosecuting Attorney  
11 Clark County Prosecutor's Office – Civil Division  
12 PO Box 5000  
Vancouver WA 98666-5000  
Tele: (564) 397-4755  
Email: leslie.lopez@clark.wa.gov

13 *s/ Amanda Migchelbrink*

14 Amanda M. Migchelbrink, WSBA #34223  
15 Senior Deputy Prosecuting Attorney  
16 Clark County Prosecutor's Office – Civil Division  
17 PO Box 5000  
Vancouver WA 98666-5000  
Tele: (564) 397-4764  
Email: amanda.migchelbrink@clark.wa.gov

18 *Attorneys for Defendants, John Horch and Tony Golik*  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**CERTIFICATE OF SERVICE**

I hereby certify that on June 29<sup>th</sup>, 2023, I electronically filed the foregoing document with the Clerk of the Court using the Court's CM/ECF system which will serve a copy of such filing to all parties of record as follows:

Joel B. Ard  
Ard Law Group PLLC  
PO Box 11633  
Bainbridge Island WA 98110  
joel@ard.law  
*Attorney for Plaintiffs*

Christine M. Palmer  
Kitsap County Prosecuting Attorney  
614 Division St. MS-35A  
Port Orchard, WA 98366  
cmpalmer@kitsap.gov  
*Attorney for John Gese and Chad M. Enright*

Lyndsey Marie Downs  
Margaret Duncan  
Snohomish County Prosecuting Attorney  
3000 Rockefeller Avenue, M/S 504  
Everett WA 98201  
lyndsey.downs@co.snohomish.wa.us  
margaret.duncan@co.snohomish.wa.us  
*Attorneys for Defendant Adam Fortnoy  
and Jason Cummings*

Zachary J. Pekelis  
Kai A. Smith  
Meha Goyal  
Pacifica Law Group LLP  
1191 Second Avenue, Suite 2000  
Seattle, WA 98101  
Zach.Pekelis@pacificallawgroup.com  
Kai.Smith@pacificallawgroup.com  
Meha.Goyal@pacificallawgroup.com  
*Attorneys for Intervenor-Defendant  
Alliance for Gun Responsibility*

R. July Simpson  
William McGinty  
Andrew W. Hughes  
Kristin Beneski  
Attorney General  
1125 Washington Street SE  
PO Box 40100  
Olympia WA 98504-0100  
rjuly@atg.wa.gov  
William.McGinty@atg.wa.gov  
Andrew.Hughes@atg.wa.gov  
*Attorneys for Defendants  
Robert Ferguson and John R. Batiste*

Christopher E. Horner  
Kittitas County Prosecuting Attorney  
Room 213, Kittitas County Courthouse  
205 W 5th  
Ellensburg, WA 98926  
christopher.horner@co.kittitas.wa.us  
*Attorney for Defendants,  
Clayton Myers and Gregory L. Zempel*

Dated June 29<sup>th</sup>, 2023.

*s/ Nichole Carnes*  
Nichole Carnes, Legal Assistant